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4 **E-FILED on** 8/29/06
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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 KENNETH HOLCOMB,

13 Plaintiff,

14 v.

15 DIRECTOR OF CORRECTIONS, CAL
TERHUNE, et al.

16 Defendants.

17
18 No. C-03-02765 RMW

ORDER GRANTING MOTION FOR LEAVE
TO FILE A MOTION FOR
RECONSIDERATION AND SETTING
BRIEFING SCHEDULE

[Re Docket No. 36]

19 On March 31, 2005 the court issued an order denying defendant's motion to dismiss based on
20 the holding in *Ngo v. Woodford*, 403 F.3d 620 (9th Cir. 2005). Defendant's motion to dismiss rested
21 on the contention that plaintiff's action is barred for failure to exhaust administrative remedies
22 required by 42 U.S.C. § 1997e(a). In its motion to dismiss, defendant argued that plaintiff's
23 administrative appeal is incapable of exhaustion because it was rejected as untimely. In *Ngo*, the
24 Ninth Circuit held that the Prison Litigation Reform Act of 1995's ("PLRA") exhaustion requirement
25 does not bar subsequent judicial consideration of an exhausted administrative appeal that was denied
26 on state procedural grounds (timeliness). Accordingly, the court denied defendant's motion to
27 dismiss.
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ORDER GRANTING MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION AND SETTING BRIEFING
SCHEDULE—C-03-02765 RMW
SPT

1 On June 22, 2006 the United States Supreme Court reversed the Ninth Circuit's holding in
2 *Ngo. Woodford v. Ngo*, 126 S. Ct. 2378 (2006). Defendant now seeks leave to file a motion for
3 reconsideration of the court's March 31, 2005 Order pursuant to Civil Local Rule 7-9(b)(2). In light
4 of the Supreme Court's June 22, 2006 ruling, the court finds reconsideration proper. The court
5 grants the motion and sets the following briefing schedule:

6 Plaintiff's opposition shall be filed by:	Friday, September 29, 2006
7 Defendant's reply shall be filed by:	Friday, October 6, 2006
8 A hearing, if any, shall take place:	Friday, October 20, 2006 at 9:00 a.m.

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10 DATED: 8/28/06


RONALD M. WHYTE
United States District Judge

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13 Counsel are responsible for distributing copies of this document to co-counsel that have not
14 registered for e-filing under the court's CM/ECF program.

15 **Dated:** 8/29/06

16 SPT
Chambers of Judge Whyte

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